



State of Wisconsin Department of Public Instruction

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State Superintendent

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March 28, 2002

William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW., Suite TW— A325
Washington, D.C. 20554

RE: Schools and Libraries Universal Service Support Mechanism - CC Docket No. 02-6

Dear Mr. Caton:

The Wisconsin Department of Public Instruction appreciates the opportunity to comment on the Notice of Proposed Rule Making for the Schools and Libraries Universal Service Support Mechanism (E-rate). This program has provided schools and libraries in our state with \$111.4 million in discounts since its inception in 1998.

The department is a strong supporter of the E-rate program, and we have commented on many FCC orders related to this program, including the first FCC order issued in 1996 (CC Docket No. 96-45). Our staff are active in the Chief Council of State School Officers (CCSSO) E-rate Alliance and the American Library Association's (ALA) E-rate Task Force. Staff spend considerable time assisting schools and libraries in all aspects of this complex program.

The enclosed comments are intended to make the E-rate program better and easier for both the applicants and the program administrator and to carry out the language of section 254 of the Telecommunications Act of 1996. Furthermore, we believe these comments comport well with the FCC goals stated in the notice: (1) to streamline and improve the program, (2) to ensure fair and equitable distribution of funds, and (3) to protect the program against waste, fraud, and abuse.

Thank you for the opportunity to comment on this important program.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Burmaster".

Elizabeth Burmaster
State Superintendent

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**Before the Federal Communications Commission
Washington, D.C.**

In the Matter of:)	
Schools and Libraries Universal)	CC Docket No. 02-6
Service Support Mechanism)	

**Comments Submitted by the
Wisconsin Department of Public Instruction (WDPI)**

Introduction

The background section of the NPRM states, “Oversight of such a far-reaching program is necessarily intensive and complex.” We disagree. It does not, necessarily, have to be this way. But through a myriad of complex rules coupled with a seemingly endless program cycle implementation process, the FCC and the Schools and Libraries Division (SLD) have created a complex program that results in an equally intense and complex oversight process. This complexity leads to applicant frustration and higher-than-necessary administrative costs and is certainly a factor in any program waste, fraud, and abuse. As an indication of the program’s complexity, consider that four years after the E-rate’s start the SLD still finds it necessary to hold regular biweekly calls with state coordinators to keep them up to date on program changes and interpretations. While these calls are helpful, we know of no other federal program that needs such regular communication with the states.

The prevailing theme in our response is to simplify and streamline the program in all aspects.

Recommendations for Program Changes

Discounts on plain old telephone service (POTS)

Applying for POTS discounts should be an easy, straightforward process, it is not. SLD decisions, such as making some lines ineligible, have created needless complexity and confusion. Applicants must scrutinize their monthly bills to eliminate phone lines that are not eligible (assuming they understand which lines are eligible and which are not). This increases administrative costs for both the applicants and the SLD and invites waste and abuse. In program year 3, only 18% of Wisconsin’s libraries applied for discounts on POTS services. This figure fell to 15% in year 4. In a WDPI survey of libraries that did not apply, the overwhelming response was that the program was too complicated, even for something as simple as phone discounts.

From a customer’s perspective, the Universal Service Administrative Company’s (USAC) other two programs, the High Cost and Low Income programs, are not nearly so complex as the E-rate program. In the High Cost program, customers never have to complete several forms each year to get a phone bill discount, they do not have to submit copies of monthly bills to any agency, they are never denied a discount, and they are never contacted by program staff, at times to the point of harassment, regarding their discounts. In brief, customers in high cost areas *do nothing*

and yet they still receive a discount on their telephone bills. If USAC's two other programs can provide discounts to millions of customers with little or no action needed by the customers, why can't a similar process be applied to thousands of schools and libraries to get discounts on their telephone bills through the E-rate? With the E-rate modeled more closely on these other USAC programs, there would be no applicant waste, fraud, or abuse, and with a much more streamlined and rational application process, more schools and libraries would apply. To those who say that some services, like a phone line to a school bus barn, are not eligible under current E-rate rules, we say *change the rules*. In summary, we challenge the FCC to find a way to make something as simple as POTS simple for applicants to apply for, too.

Need to bid for services

Currently, applicants who have ongoing contracts need not file a Form 470 for the second and subsequent years for services covered by such contracts. We propose the FCC broaden this to allow all telecommunication services (voice and data, tariffed and nontariffed) to be discounted without requiring the applicant to go through the annual competitive bidding process. We understand the desire of the FCC to encourage competition in the telecommunications sector, but companies wanting to submit competing proposals could still do so based on the originally posted form 470. However, the process of filing thousands of 470 forms every year for telecommunication services requires considerable time and resources from applicants and results in additional administrative costs for the SLD.

Change the method for determining library discounts

Currently, libraries must determine their discount using a weighted average of all the schools in the community's school district. School districts have the option of calculating discounts on a school-by-school basis. This results in libraries being disenfranchised from receiving discounts, especially on Priority Two services. For example, in Milwaukee the Center Street branch library is literally across the street from the Clarke elementary school. The school is at a 90% discount and qualified in Year 4 for Priority Two funding. Yet, because the library branch must use the school district-wide average of 83%, the branch did not qualify for Priority Two funding. As a result of this discriminatory way of computing discounts, in Year 4 no libraries in Wisconsin received Priority Two discounts, while a total of \$6,305,509 in Priority Two discounts were awarded to schools. We do not think such a flagrant discrepancy meets anyone's understanding of the phrase "ensure fair and equitable distribution of funds." To address this inequity, the WDPI proposes that library branch locations have the option to use the lunch discount figure from their nearest public elementary school. This simple step could be of considerable help in addressing this funding inequity.

Program funding and the discount matrix

At the start of the program, the Congressional Budget Office estimated that \$2.25 billion annually would be sufficient to fund the program through 2008. This amount was exceeded in just the second year of the program, and in year 5 (2002/03), the SLD estimates total funding requests are over \$5.7 billion. Considering this, we recommend the FCC increase the funding level to at least \$3 billion annually. We also strongly support the FCC's second option in paragraph 70 to require the distribution of unused funds to applicants in subsequent years in excess of the current \$2.25 billion. We agree fully with Commissioner Copps that the FCC has

the ability, and in our opinion the responsibility, to do this now. In relation to the first option in paragraph 70, has the FCC's current policy to credit back to contributors unused funds resulted in reduction of contributors' Universal Service charge on any phone bills? We are not aware of any such reductions.

In addition, we request the commission to create a separate discount matrix for Priority Two services. Because of the program's underfunding, fewer than 7% of our public schools and 0% of our libraries qualified for Priority Two services in Year 4. A matrix, in which discounts range between 10% to 50%, has several benefits, including (1) making more applicants eligible for Priority Two services, which helps meet the FCC's goal of distributing funds in a fair and equitable manner, (2) discouraging applicants from engaging in the equipment transfer the FCC cites as a concern in paragraphs 37-40, and (3) making it less likely that unscrupulous vendors will engage in questionable marketing tactics that cause some degree of program waste and abuse.

Recognize the critical role of state E-rate coordinators

Paragraph 11 of the NPRM states that the "[a]dministrator's administrative costs remain small as a percentage of total program costs, particularly in comparison to other federal programs." A major reason for this is the considerable work that state E-rate coordinators do in their respective states. For all this work, the states receive *no recognition or any compensation from the SLD*.

The SLD has done no direct outreach to applicants since Year 2. Instead, it relies on state coordinators to work directly with applicants. Thus, state coordinators are key players in helping the FCC realize its goal "to ensure that the program funds are utilized in an efficient, effective, and fair manner, while preventing waste, fraud, and abuse." State coordinators plan, coordinate, and finance workshops to help applicants understand the complex rules and application process. They maintain Websites and listservs and provide day-to-day guidance on a myriad of ongoing issues. In addition, coordinators read and approve technology plans, serve as program arbiters between applicants and SLD's program review staff, and coordinate the collection of lunch discount data. Coordinators consult with applicants on whether a denial of service is worthy of appeal. WDPI staff estimate they spend \$90,000 annually on E-rate related services to schools and libraries in Wisconsin. *We know of no other federal program that relies so heavily on state education and library agencies but allocates \$0.00 for all their work.*

In consideration of the critical but unrecognized work state coordinators do, we suggest the FCC/SLD consider, at a minimum, reimbursing the costs of state E-rate coordinators to attend the annual SLD meeting in Washington, D.C. This meeting provides coordinators with the latest program information and updates, yet the coordinators must pay their own expenses. Such cavalier treatment of key people in this program is indefensible. The FCC/SLD should pay for a school coordinator and library coordinator from each state to attend this annual meeting. The SLD's claim that it cannot afford to pay for this is without merit. A total cost of \$100,000 for reimbursement would be just 0.00004 of the program's appropriation. Furthermore, the FCC should consider allocating funds to state education and library agencies to make certain all states have at least an assigned E-rate coordinator paid through the fund. We suggest one FTE in larger states, scaling this down to .5 FTE funding for smaller states. Our estimate for this cost is \$3.2 million, or 0.0014 of the program's appropriation.

Finally, state coordinators can do a better job in helping applicants if they have access to critical E-rate program data. The CCSSO and the ALA have been asking to get access to such data for years with little success. For example, being notified when applicants are denied their discounts and getting a list of individual schools and libraries when they apply as a consortium.

The following comments refer to more specific sections referenced in Part III, Notice of Proposed Rule Making.

A. Application Process

Paragraphs 13-15, Eligible Services List: The 1996 Telecommunications Act specifies that the FCC shall establish competitively neutral rules to enhance access to advanced telecommunications and information services. Unfortunately, far too often the SLD's Eligible Services List supports only the status quo, from both a market and a technology perspective. The end result is that the list does the opposite of what is stated in the law. In addition, services listed in the ESL are often too narrowly defined or contain contradictory or vague language. This leads to questionable service denials, which leads to more appeals, which leads to higher administrative costs and possible waste, fraud, and abuse. Considering all the problems with the current Eligible Services List, we question whether the FCC's suggestion to have a pre-approved list of services is a solution. It could easily lead to more applicant confusion and turn into a list to support the technology status quo.

Paragraphs 16-21, Wide Area Networks (WANs): The department wants to state its *strong support* that discounts for costs associated with WANs remain a Priority One service. Demand in Year 4 for all telecommunication services was \$1,347,316,742, and demand in Year 5 is \$1,404,791,184. With this minimal increase, we do not see the "critical drain" on program funding that the FCC cites as a possible concern. We do take issue with the current rule that requires WAN communication links (wireline or wireless) to be leased and not purchased. *This requirement is not competitively neutral.* Not allowing the purchase of WANs can lead to waste and abuse. There are school districts in Wisconsin where the payback time to purchase WAN communication lines is only a few months, compared to leasing lines. In instances like this, leasing lines leads to a waste of program funds. Applicants should have the latitude to select the best, most efficient WAN option, regardless of whether it is a lease or purchase option.

Following are several examples where the Eligible Services List is too narrowly defined or contradictory.

Internet2: A telecommunications link that connects to Internet2 is eligible for discount in the telecommunication area of service, but fees for nontelecommunications services are not eligible. Features typically allowed under the current Internet definition include DNS, DHCP, email, and caching services. If these services are offered as part of an Internet Service Provider's Internet2 access service, why are they not allowed? We find the current interpretation illogical.

Plain Old Telephone Service (POTS): We have suggested a remedy in the Program Changes section above. If there is any waste in this area of the program, it is from applicants and the administrator spending an inordinate amount of time trying to determine eligibility on a phone line-by-line basis. A solution is to make the ESL more encompassing for POTS. For example, telephone lines for burglar alarms and 911 services in schools are not eligible. With all the tragic

cases of school violence in recent years, how can anyone claim that services to help maintain a safe education environment are not an integral part of the learning process? Lines for administrative purposes should also be allowed. School administration is the foundation upon which learning takes place. To deny the eligibility of such lines makes no sense. Voicemail is another example. It is contradictory to allow discounts on email but not voice mail.

Paragraphs 23-25: Discounts for Internet Access When Bundled with Content: The current rule interpretation allowing some bundling of content with Internet access is already confusing to applicants. By proposing to open this to even broader interpretation, the FCC is inviting the abuse that it seeks to avoid. It is difficult to envision how such a change would actually increase administrative efficiencies, whereas the opposite may very well be true. If this is allowed, every Internet service provider will start to bundle content, but perhaps this is the FCC's intent. That is, broadening the rules on content will be a way for the FCC to implement the provision in the 1996 act that refers to "access to advanced telecommunications *and information services*" [emphasis added] (254(h)(2)(A)). Our department believes the FCC was not justified in denying discounts on information services in the original May 8, 1997, order (paragraph 441).

Paragraphs 26-27: Review of Requests Including Eligible and Non-Eligible Services: The current 30% benchmark has proven to be a workable solution to the problem of determining funding levels when requests include both eligible and ineligible services. However, the need for any benchmark would be less if the Eligible Services List provided clear and noncontradictory guidance on what is an eligible service and what is not.

Paragraphs 30-32: Consortia issues: We agree with the FCC's attempt to make issues associated with consortia applications clearer. The FCC should also review the current discount methodology. Using a straight averaging of school district averages, instead of a weighted average, often penalizes consortia applications.

B. Post-Commitment Program Administration

Paragraphs 33-36: Choice of Payment Method: For a host of reasons, including repeated failure to notify applicants of their funding commitment by the start of each program year, the Billed Entity Applicant Reimbursement (BEAR) process has been developed. We support allowing applicants to select the method of payment. However, when the BEAR is used, a far more straightforward process would be for the program administrator to remit BEAR payments directly to applicants. Sending BEAR checks to service providers and then having them send the checks to applicants is needless paper shuffling and increases administrative costs. The FCC has been reluctant to reimburse applicants directly because the 1996 act refers only to providing discounts to schools and libraries. However, the BEAR process itself is an exception to the language of the act, and thus we think direct payments under such circumstances are wholly justified.

Paragraphs 37-40: Equipment Transferability: The WDPI is in general agreement that rules should be developed to prevent the wholesale transfer of eligible equipment from some applicants to other schools or libraries. While not opposed to the FCC's proposed three-year prohibition on equipment transfer, we believe it will be difficult to enforce and will increase administrative costs. Another method to address equipment transfer is to develop a separate discount matrix for Priority Two services as described in the Program Change section above.

Applicants are much less likely to transfer equipment when they have to pay 50% of its cost instead of the current 10%.

Paragraph 41-47: Use of Excess Services in Remote Areas: We support the Alaska decision. However, it is so narrowly crafted that it will not apply to any locations in Wisconsin. For example, Internet costs for over 95% of Wisconsin schools and libraries are partly usage based.

C. Appeals

Paragraphs 48-52: Appeals Procedure: The commission should make permanent the current 60-day appeal deadline. The commission notes the 30-day period was established partly in response to commenters' requests for a streamlined approach. The bottleneck in the appeals process is not on the applicant's side but on the administrator's or the FCC's side of this issue. *It often takes more than a year to get an appeal decision back to the applicant from the administrator or the FCC*, even though the written expectation from the FCC is that a response will be received in 90 days. If applicants must file an appeal within 60 days, we propose the SLD or FCC must then issue a response to deny or honor the appeal also within 60 days of filing.

Paragraphs 53-57: Funding of Successful Appeals: We agree that limiting appellants to those funds in the appeal reserve fund might result in successful appellants being treated differently from applicants who were awarded funding initially. We support the remedies the FCC has outlined to address this issue.

D. Enforcement Tools

Paragraphs 58-59: Independent Audits: We have no issue with the FCC's drafting of rules to explicitly authorize the administrator to require independent audits of recipients and service providers. However, we believe that only in instances where waste and fraud have been explicitly identified should the cost for such audits be placed back on the applicant or service provider. We also believe a simple trigger mechanism should be employed by the administrator to identify possible abuses. For example, we are aware of schools that have received over \$2,000 per student in Priority Two discounts. A number in this range should immediately trigger a flag in the data entry and review process that alerts the administrator that this application requires more detailed review. We have been told by SLD staff that no automatic alert process of this type is currently in place.

E. Unused Funds

Paragraphs 69-70: Treatment of Unused Funds: We have addressed this in the Program Change section above.

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